

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ROBERT C. MCMATH,

Plaintiff,

v.

Case No. 24-C-20

SCOTT C. KINNARD, et al.,


Defendants.

DECISION AND ORDER

Plaintiff Robert C. McMath, who is representing himself, is proceeding on First and Eighth Amendment claims against Defendants Scott Kinnard, Julio De Lima Silva, Krystal McBride, Brandon Fisher, Tonia Moon, and Zachary Lange in connection with allegations that they instigated an attack by another inmate on September 4, 2023, failed to protect Plaintiff, and were retaliating against Plaintiff for inmate complaints he filed at the Waupun Correctional Institution. Dkt. Nos. 16, 23. On February 12, 2025, Defendants filed a motion for partial summary judgment on exhaustion grounds. Dkt. No. 54. Defendants argued that Plaintiff failed to exhaust his administrative remedies on all claims except Plaintiff's Eighth Amendment claim against Silva. Dkt. No. 57. In response, Plaintiff argued that he exhausted both the First and Eighth Amendment claims he asserts against Silva, *see* Dkt. No. 61, but he agreed to voluntarily dismiss the remainder of the defendants and claims from the case, *see* Dkt. No. 66. Defendants concede that Plaintiff satisfied exhaustion on both his First and Eighth Amendment claims against Silva. Dkt. No. 65. In sum, following full briefing of the exhaustion motion, the parties agree that Plaintiff exhausted his First and Eighth Amendment claims against Silva and that the remainder of the claims can be dismissed without prejudice based on Plaintiff's failure to exhaust administrative remedies.

IT IS THEREFORE ORDERED that Defendants' motion for partial summary judgment on exhaustion grounds (Dkt. No. 54) is **GRANTED-IN-PART** and **DENIED-IN-PART**. The motion is granted with respect to Plaintiff's claims against Kinnard, McBride, Fisher, Moon, and Lange, and those claims are **DISMISSED without prejudice**. The motion is denied in all other respects. What remains are Plaintiff's First and Eighth Amendment claims against Silva.

Dated at Green Bay, Wisconsin this 21st day of May, 2025.



William C. Griesbach
United States District Judge